

A Guide to the State Employees' Grievance and Appeal Procedures



Utah Career Service
Review Board

To State Employees:

This brochure briefly explains the State's Grievance and Appeal Procedures. However, this brochure is neither comprehensive nor legalistic. More detailed information is available in the statutory provisions found in the *Grievance and Appeal Procedures Manual* and in the current *Utah Administrative Code*, at Sections R137-1-1 through -23.

Employees and supervisors are strongly encouraged to fully discuss complaints and disputes in a problem-solving approach. Most grievances can be resolved early-on through discussion and open communication.

The Career Service Review Board (CSRB) Administrator has statutory authority to conciliate and mediate employees' problems. Mediation is an effective way to solve problems because then the parties themselves work out their own solutions.

Nevertheless, when mediation fails, and if the grievance qualifies to be advanced to the evidentiary level at Step 5, then a solution may be imposed by adjudication. Adjudication means an impartial trier of facts (or hearing officer) considers the evidence and application of rules, laws and policies, and renders a written, legal decision. This legal decision is binding on both the employee and agency management, unless appealed to a higher level.

In conclusion, may I suggest that although these grievance procedures ultimately provide a legal decision to employees' grievances, the parties will find that resolving their differences at the lowest possible level is mutually more beneficial. Successful problem-solving may curtail a lengthy and time-consuming chain of appeals.

Respectfully yours,

Robert W. Thompson
CSRB Administrator

THE CAREER SERVICE REVIEW BOARD

The CSRB is an independent State agency which administers these Grievance and Appeal Procedures. Five Board Members are each appointed by the Governor to four-year terms. The Board serves as the final administrative body to review appeals from employees and State agencies, but only for 11 specified issues set forth later in this brochure.

ELIGIBILITY

Only career service employees are entitled to use these Grievance and Appeal Procedures. Thus, a grievant must be one who has attained career service (i.e., merit or tenure) status and is presently serving in a position covered by the career service, that is a Schedule B position.

Supervisory, professional, technical and management personnel may also use these Grievance and Appeal Procedures if their present position has career service status. However, the following groups are **statutorily excluded** from using these Grievance and Appeal Procedures:

- Applicants to State employment
- Probationary employees
- Elected officials
- Certain executive branch appointees
- Legislative and judicial employees
- Persons serving in exempt and noncareer service positions
- Employees of the State's higher educational institutions
- Members of State boards, commissions, advisory councils, etc.

DEFINING A GRIEVANCE

A grievance is a claim or charge by a career service employee of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice, or unfair employment practice, not including position classification or schedule assignment. Administrative actions may also be grieved.

An appeal is a grievance advanced to a higher level of review.

Overall, the law provides a broad interpretation of grievable issues; however, only 11 specified issues may be advanced to Steps 5 and 6, as explained later,

THE GRIEVANCE FORM

The CSRB publishes a grievance form entitled *Career Service Review Board Grievance Form*. This form is available at each department's human resource office. It is also available on the CSRB's website www.csr.utah.gov. If you are not able to obtain one through either of these venues, you may contact the CSRB office by telephone (801.538-3048), by fax (801.538-3139), by E-mail (cjones@utah.gov), by mail, or in person at our office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114-1561. This form is self-explanatory. It contains space for identifying information, and a place for a description of the grievance and for responses at the appropriate levels. The time frames are also listed on the back.

Under remedy or relief sought, the aggrieved employee should be specific as to the harm or injustice suffered. Also, the grievant is asked to cite the date of the event giving rise to the grievance. Timeliness is a critical factor in the Grievance and Appeal Procedures.

Writing an appropriate grievance statement is a matter of good sense. Too wordy a statement may confuse management, especially those not familiar with the problem. Too brief a statement may hinder sufficient understanding. State the facts clearly and orderly.

TIMELINESS

An employee's grievance must be submitted within 20 working days from the *event* causing the grievance; or, a grievance must be submitted within 20 working days from the date that the aggrieved employee first has *knowledge* of the event causing the grievance. However, an employee may not file a grievance more than one year after the event giving rise to the grievance.

An employee who has voluntarily terminated his or her employment with the State has no standing to submit a grievance.

EMPLOYEE RIGHTS

By law, a career service employee is entitled to the following:

- assistance by a representative of the employee's choice to act as an advocate at any level;¹
- a reasonable amount of time during working hours to prepare the grievance;
- freedom from reprisal for using the Grievance and Appeal Procedures; and
- the right to call other employees as witnesses at a hearing.

WHAT IF MANAGEMENT FAILS TO RESPOND TO MY GRIEVANCE?

Failure to answer an employee's grievance within the time specified automatically grants the aggrieved employee the right to process it to the next step. However, the employee must advance the grievance with the required time frame. *Timeliness is always the employees' responsibility.*

MAY TIME LIMITS BE WAIVED?

Steps 2, 3 or 4, or any time limits specified at any step, may be waived or extended by *mutual written agreement* between the aggrieved employee and the person to whom the grievance is directed.

Failure to process an appeal from one step to the next is deemed a waiver by the aggrieved employee of any right to process the grievance further or to appeal to the court.

¹The State does not provide legal counsel nor contribute to the financial support of an employee's representative in grievance hearings, nor may attorney's fees be awarded.

PROCESSING GRIEVANCES THROUGH THE FIRST FOUR STEPS

Step 1 – A career service employee aggrieved by an agency action shall first try to resolve the problem through an informal discussion with the employee's immediate supervisor.

Step 2 – If the grievance at Step 1 remains unanswered for five working days after discuss or if the employee is dissatisfied with the decision reached by the immediate supervisor, the grievance may be formally submitted in writing to the employee's immediate supervisor (Step 2) within five working days after expiration of the period for answer or upon receipt of an unsatisfactory decision, whichever is first. The immediate supervisor must render a written decision within five working days after receipt of the employee's grievance statement or the aggrieved employee may appeal to Step 3.

At Step 2, the CSRB Administrator may attempt to settle the dispute by conference, conciliation, or mediation. The CSRB Administrator may then determine whether the employee has a right to bring the grievance, and if so, to what level it may be appealed.

If the CSRB Administrator finds that the grievance is one over which the Board has jurisdiction and the agency is unable to resolve, he may, whether on his own motion or with the concurrence of the employee and agency, waive Steps 2, 3, or even 4 and place the matter directly before a CSRB Haring Officer at Step 5.

Step 3 – Without such a waiver, if the written grievance submitted to the immediate supervisor remains unanswered for five working days after submission or if the employee is dissatisfied with the decision reached, the grievance may be submitted in writing to the employee's agency or division director (Step 3) within ten working days after the expiration of the period for the decision or receipt of the decision, whichever is first. A written response by the agency or division director (Step 3) must be rendered within five working days after submission.

Step 4 – If the grievance submitted to the agency or division director remains unanswered for five working days after submission or if the employee is dissatisfied with the decision reached, the grievance may be submitted in writing to the employee’s department head (Step 4) within ten working days after the expiration of the period for the agency or division director’s decision or receipt of the decision, whichever is first. A written response by the department head (Step 4) must be rendered within ten working days after submission of the grievance.

In matters not appealable to the CSRB, the department head’s (Step 4) decision is the final administrative ruling.

With respect to grievance issues over which the CSRB does have jurisdiction, if the department head’s response at Step 4 remains unanswered for ten working days after submission or if the employee is dissatisfied with the written response, the grievance may be advanced to Step 5 by submitting a written request to the CSRB Administrator within ten working days after expiration of the period for the department head’s decision or receipt of such decision, whichever is first. Following a prehearing conference, the case will be assigned to be heard by a CSRB Hearing Officer within 30 days, or at a date agreed upon by the parties and the CSRB Administrator.

APPEALABLE ISSUES TO STEPS 5 AND 6

Aggrieved employees may advance only the following 11 matters to Step 5 (Hearing Officer level) and Step 6 (Board level):

- Promotions
- Dismissals
- Demotions
- Suspensions
- Written reprimands
- Wages
- Salary
- Violations of personnel rules
- Administration of benefits
- Reduction in force
- Denial of abandonment

No other matters may be advanced to Steps 5 and 6. In matters other than those listed above, the department head’s decision is final with no appeal to the Board or its Hearing Officers. Jurisdictional questions may be resolved by the CSRB Administrator.

JURISDICTIONAL REVIEW

Questions concerning the jurisdiction of the Board and its Hearing Officers, and the right of an employee to use these Grievance and Appeal Procedures, are determined by the CSRB Administrator. The CSRB Administrator may conduct an administrative review of the file or hold a hearing to determine: (1) whether the employee has standing to process a claim; (2) whether the employee is covered by the career service system; (3) whether the aggrieved employee has been directly harmed by the agency’s action; (4) whether the issues are appealable, and if so, to which step; and (5) timeliness.

APPEALS FROM DISCIPLINE IMPOSED BY A DEPARTMENT HEAD

An employee who has received written notification of a disciplinary penalty imposed *directly* by the department head may grieve that action to Step 5 by submitted a written request to the CSRB Administrator with 20 working days. Using the CSRB Grievance Form is not necessary as the matter is being advanced directly to Step 5; a written letter will suffice.

REDUCTION IN FORCE GRIEVANCES

A career service employee separated due to a reduction in force may appeal directly to his or her department head for an administrative review within 20 working days after receipt of a written notification of separation. The department head then has ten working days to issue a reply.

If the aggrieved employee is dissatisfied with the results of the department head’s administrative review, the employee may appeal that decision to the CSRB by submitting a written appeal to the CSRB Administrator within twenty days from the day the employee received the department head’s final written decision.

If the appeal to the department head remains unanswered for ten working days from the day the appeal was filed, the employee may appeal to the CSRB within twenty working days from the date the department head’s administrative review was due.

LEGALLY PROHIBITED DISCRIMINATION

Any charge of legally prohibited discrimination, such as that based on race, color, sex, age (if the individual is age 40 or older), religion, ancestry, national origin, or disability, must be timely submitted to the department head in writing. If the department head’s written response is not rendered within ten working days or if the complainant is dissatisfied with the department head’s decision, then the complainant may file directly with the Utah Antidiscrimination and Labor Division of the Utah Labor Commission.

Applicants, as well as exempt, probationary, and career service employees, may use the above procedure to file legally prohibited discrimination complaints.

AT STEP 5

Upon receipt of a qualifying grievance at Step 5, the CSRB Administrator may engage in mediation between the employee and agency management to obtain resolution.

If one or more issues of the grievance have previously been resolved, only the unresolved issue(s) may be advanced.

If mediation is not effective, an administrative hearing before a CSRB Hearing Officer will be scheduled. A hearing is usually scheduled with 30 days following a prehearing conference or at a date agreed upon by the parties and the CSRB Administrator.

SCHEDULING THE HEARING

Written notice of the date, time and place of the hearing is provided by the CSRB Administrator to the grievant and to the agency a minimum of five calendar days before the hearing. The hearing may be rescheduled only for a good cause upon written request.

WHAT HAPPENS AT A STEP 5 HEARING?

Both the aggrieved employee and agency management are present to examine and cross-examine witnesses and to submit documentary evidence.

- A certified court reporter makes an official record of the proceedings.
- Witnesses may be compelled to testify by subpoena, which is administratively accomplished by the CSRB Administrator.
- The term “Grievant” refers to the aggrieved party requesting a decision at Step 5. “Agency” refers to the opposing party.
- The hearing is confined to the issue(s) presented in the original grievance statement.
- If a party does not appear at the hearing, the CSRB Hearing Officer’s decision will be based on a review of the record and the presentation of the party which is present.
- The testimony of witnesses is under oath.
- The complete record of the hearing includes the testimony taken in the hearing with all exhibits and written briefs.

THE ROLE OF THE CSRB HEARING OFFICER

The CSRB Hearing Officer calls the proceeding to order. Then, the CSRB Hearing Officer determines which party has the burden of proof and also the burden of going forward.

The State bears the burden of proof in all appeals resulting from dismissals, demotion, suspensions, written

reprimands, abandonment of position, and reductions in force. The employee bears the burden of proof in all other grievances.

A hearing takes the following format:

- Each party makes a brief opening statement as to what its respective presentation is to show.
- The moving party presents testimony and evidence with cross-examination by the opposing party.
- The opposing party similarly proceeds with its presentation.
- Each party briefly sums up its respective case and the hearing is concluded.
- Each party has one closing summation opportunity.

The CSRB Hearing Officer:

- may decide to limit the time for oral argument;
- determines the order of proof;
- may keep the record open until posthearing briefs or other items are submitted, and thus incorporated into the official record;
- files the decision with the Career Service Review Board Office that, without further action, becomes the decision and order of the Board as a result of the hearing.

HOW TO APPEAL TO THE BOARD AT STEP 6

An appeal to the Board must be made with ten working days after receipt of the CSRB Hearing Officer’s decision

- A party files a written appeal to Step 6.
- An appealing party must obtain the original and a copy of the transcript of the Step 5 proceeding from the court reporting firm. The appealing party and the CSRB shall equally share the cost of an original and one copy of the transcript.
- The CSRB Administrator receives the original transcript from the court reporting firm after it is entirely transcribed.
- The appealing party then has a 30 calendar day period to submit a brief with argument based upon the transcript copy.
- The opposing party then has a 30 calendar day period to submit a response brief.
- If they so desire, the appealing party may then submit a reply brief.
- After the Board Members have received all the parties’ briefs, the Board convenes to hear oral argument on the appeal.

FORMAT OF A BOARD HEARING AT STEP 6

Written notice of the date, time and place of the hearing is given to both parties at least five days before the hearing.

- Formal rules of evidence and procedure are not applicable to hearings before the Board, except as stated in the *Utah Administrative Procedures Act*.
- A Board hearing is based upon the evidentiary record previously established before the CSRB Hearing Officer. No new evidence is introduced, nor do witnesses testify.
- As the hearing before the Board is based upon the prior evidentiary record before the CSRB Hearing Officer, written briefs are submitted to Board Members.

- The Board offers each party about 20-25 minutes for oral argument or presentation.
- The Board's findings, conclusions and decision are based upon the substantial evidence standard.
- Hearings before the Board are on the record.
- The Board renders a written decision within 40 working days after the hearing is closed.
- The aggrieved employee or the agency may appeal the Board's decision to the Utah Court of Appeals within 30 calendar days from issuance of the Board's decision.
- The Board's decision is binding upon State agencies unless overturned or modified by the Utah Court of Appeals.

TIME FRAMES

Grievance Process:

Timeliness: 20 working days from the event or from knowledge of the event, not withstanding one year's time limit.

Step 1 – Discussion: Immediate Supervisor has five working days to respond verbally.

Grievant has five working days to submit grievance in writing to his immediate supervisor.

Step 2 – Immediate Supervisor has five working days to respond in writing.

Grievant has ten working days to appeal.

Step 3 – Division/Agency Director has five working days to respond in writing.

Grievant has ten working days to appeal.

Step 4 – Department Head has 10 working days to respond in writing.

Grievant has 10 working days to appeal in writing to the CSRB Administrator for a Step 5 hearing.

Discipline Imposed by Department Head:

The aggrieved employee has 20 working days to appeal the Department Head's decision to the CSRB Administrator.

Reduction in Force Appeals:

The employee has 20 working days to appeal the Department Head's final written decision to the CSRB Administrator.

Legally Prohibited Discriminatory Complaints:

After a complaint is filed, the Department Head has 10 working days to respond in writing.

If not satisfied with the reply, the Complainant may then file a formal charge with the Division of Antidiscrimination and Labor within the Labor Commission.

*** * *NOTE* * ***

Readers are welcome to submit inquiries to the Career Service Review Board staff.

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